

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WILLIAM RAY PRATT,

Petitioner,

v.

MARTY SIRMONS,

Respondent.

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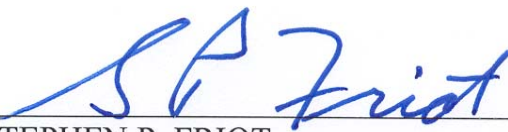
No. CIV-04-1070-F

ORDER

Petitioner, a prisoner appearing *pro se*, has filed a Motion to Proceed *in forma pauperis* on Appeal. [Doc. No. 49]. Although 28 U.S.C. § 1915(b) does not apply to habeas actions, *see United States v. Simmonds*, 111 F.3d 737 (10th Cir. 1997) (holding Prison Litigation Reform Act inapplicable to habeas and §2255 actions and appeals) *overruled on other grounds* in *U.S. v. Hurst*, 322 F.3d 1256 (10th Cir. 2003), both §1915(a)(1) and (a)(3) do apply to a habeas appeal. Accordingly, a petitioner must show that the appeal is taken in good faith and that he lacks the financial ability to pay the required fees. *See, McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997).

Having reviewed the motion and the record, the Court finds that Petitioner has presented a reasoned, non-frivolous argument on appeal and that the appeal is taken in good faith. Accordingly, the Court finds Petitioner is entitled to proceed *in forma pauperis* without pre-payment of all fees, and this motion is GRANTED. 28 U.S.C. § 1915(a)(1) and (a)(3).

IT IS SO ORDERED this 20th day of November, 2006.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE